Supreme Court, U. S.
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IN THE

Supreme Court of the United States

October Term, 1979
No. 79-981

MINNESOTA EDUCATION ASSOCIATION and
MINNESOTA COMMUNITY COLLEGE FACULTY ASSO.,
Appellants,

vs.

STATE OF MINNESOTA; CLARENCE E. HARRIS, in his capacity as State Commissioner of Personnel, and THE MINNESOTA STATE LEGISLATURE,
Appellees.

ON APPEAL FROM THE SUPREME COURT OF MINNESOTA

MOTION TO DISMISS OR AFFIRM

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January 18, 1980

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STATE OF MINNESOTA; CLARENCE E. HARRIS, in his capacity as State Commissioner of Personnel, and
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ON APPEAL FROM THE SUPREME COURT OF MINNESOTA

MOTION TO DISMISS OR AFFIRM

January 18, 1980

Appellees move the Court to dismiss the appeal herein or, in the alternative, to affirm the judgment of the Supreme Court of Minnesota. The grounds for this motion are that the decision of the Supreme Court of Minnesota is clearly correct and that the question raised by appellants is so insubstantial as not to need further argument.

QUESTION PRESENTED

When the Minnesota Public Employment Labor Relations Act provides for final and binding interest arbitration awards for non-state public employees, does Minn. Stat. § 179.74, subd. 5, which authorizes the Minnesota Legislature to modify or reject labor agreements encompassing interest arbitration awards for employees of the State of Minnesota, deny equal protection to state employees in violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution?

STATUTES INVOLVED

Most of the pertinent provisions of the Minnesota Public Employment Labor Relations Act (PELRA), Minn. Stat. §§ 179.61 to 179.76 (1976) are set forth on pages 2-4 of appellant's jurisdictional statement. Minn. Stat. §§ 179.71, subd. 3, and 179.74, subds. 2 and 4, Minn. Stat. § 179.63, subd. 4 as amended by the 1978 legislature, and the correct text of Minn. Stat. § 179.69, subd. 5 are reproduced as Appendix A to this motion.

STATEMENT OF THE CASE

This is an appeal from a decision of the Minnesota Supreme Court that Minn. Stat. § 179.74, subd. 5, reserves to the Legislature the right of review and modification of interest arbitration awards[1] involving state employees and that this reservation is not a denial of equal protection under the law.

The Minnesota Community College Faculty Association (MCCFA) is an affiliate organization of the Minnesota Education Association (MEA) and the exclusive representative of the professional staff of the Minnesota Community College System. Since 1973 the MCCFA has negotiated collective bargaining contracts with the State of Minnesota which establish terms and conditions of employment for Community College faculty employees.

This matter arose out of an unfair labor practice charge filed in the District Court of Ramsey County, Minnesota. In that action, MEA and MCCFA challenged the validity of Minn. Laws 1977, ch. 449, § 5 on two grounds. First, MEA and MCCFA claimed that the enactment of chapter 449, § 5 constituted an unfair labor practice under PELRA and that chapter 449, § 5 was therefore invalid by virtue of being in conflict with another statute. Alternatively, they contended that if Minn. Stat. § 179.74, subd. 5, of the PELRA authorizes the Legislature to modify the financial portions of an arbitration award covering state employees, that subdivision is invalid as a denial of equal protection.

Negotiations for the 1977-79 Community College labor agreement commenced in April, 1976, between the MCCFA and representatives of the state Commissioner of Personnel,

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[1] Interest arbitration involves the determination of terms and conditions of employment as contrasted to grievance arbitration which involves the interpretation of agreed upon contract provisions.

the "employer of state employees" under Minn. Stat. § 179.74, subd. 2 (1976). Bargaining continued until an impasse was reached in February, 1977. The MCCFA then petitioned the Minnesota Director of the Bureau of Mediation Services for arbitration. Shortly thereafter, the Commissioner of Personnel agreed to the MCCFA's request, and the Director certified the nine items remaining in dispute to the Public Employment Relations Board (PERB). PERB then provided a list of potential arbitrators from which a panel of three arbitrators was selected by the parties. Prior to the arbitration hearing, the parties voluntarily resolved seven of the disputed issues leaving only salary structure and a non-economic issue before the panel.

The arbitration panel issued its award on May 3, 1977. That award provided a salary increase of approximately 18 percent for the 1977-79 biennium. On May 10, 1977, the MCCFA and representatives of the Commissioner of Personnel executed a written agreement which incorporated the salary structure established by the arbitration panel.

The Community College labor agreement was thereafter submitted to the Minnesota Legislature in accordance with Minn. Stat. § 179.74, subd. 5 which provides:

> The commissioner of personnel is authorized to and may enter into agreements. The provisions of said agreements which establish wages and economic fringe benefits *shall be submitted to the legislature to be accepted, rejected or modified.*

(Emphasis added.)

On May 19 and 20, 1977, the Legislature modified the salary provision of the Community College arbitration award. The modification was accomplished by the enactment of

Minn. Laws 1977, ch. 449, § 5. The Governor of the State of Minnesota signed that act into law on or about June 8, 1977. Subsequently, the MCCFA and the Community College Board agreed to a revised salary schedule which complied with the provisions of chapter 449, § 5.

MEA and MCCFA then filed suit challenging that statutory revision in the District Court of Ramsey County, Minnesota. Following a trial on the merits, Ramsey County District Court Judge Edward D. Mulally issued Findings of Fact, Conclusions of Law and Order for Judgment on January 30, 1979 in which he concluded that MEA and MCCFA had not waived the right to challenge the Legislature's review of the arbitration award, that the Legislature had committed an unfair labor practice by the enactment of chapter 449, § 5 and that the employees in question were entitled to damages. The trial court also found that the case could be decided on its facts and existing law without resort to considerations of the constitutionality of Minn. Stat. § 179.74, subd. 5 or Minn. Laws 1977, ch. 449, § 5.

The State defendants appealed to the Minnesota Supreme Court, which reversed the judgment of the Ramsey County District Court. The Minnesota Supreme court held that Minn. Stat. § 179.74, subd. 5 reserves to the Legislature the right to modify or reject the economic provisions of labor agreements covering state employees no matter how arrived at. The Minnesota Supreme Court then considered the MCCFA's claim that the Legislature had denied equal protection to state employees by treating them differently than other public employees. The Court held that since there were at least three rational bases for treating the two groups differently, there was no denial of equal protection.

ARGUMENT

THE DECISION OF THE MINNESOTA SUPREME COURT THAT MINNESOTA STATUTES SECTION 179.74, SUBDIVISION 5 DOES NOT DENY EQUAL PROTECTION TO STATE EMPLOYEES IS CLEARLY CORRECT.

The MEA and MCCFA argue that Minn. Stat. § 179.74, subd. 5 (1976), which authorizes the Minnesota Legislature to modify the economic provisions of interest arbitration awards for state employees, unlawfully discriminates against state employees because interest arbitration awards covering most other public (non-state) employees are final and binding under the provisions of Minn. Stat. § 179.72, subd. 7 (1976). The Minnesota Supreme Court correctly concluded that there is a rational basis for treating these two groups of public employees differently and consequently there is no denial of equal protection inherent in Minn. Stat. § 179.74, subd. 5.

It is well established that a legislative classification will not be set aside under the equal protection clause unless the plaintiff shows that no reasonable or rational basis can be conceived to justify it. *McGowan v. Maryland*, 366 U.S. 420, 426 (1960); *Lindsley v. Natural Carbonic Gas Co.*, 220 U.S. 61, 79 (1911). This Court recently reaffirmed this standard in *City of New Orleans v. Dukes*, 427 U.S. 297 (1976) wherein the Court explained that:

> Unless a classification trammels fundamental personal rights or is drawn upon inherently suspect distinctions such as race, religion, or alienage, our decisions presume the constitutionality of the statutory discriminations and require only that the classification challenged be rationally related to

> a legitimate state interest. . . . In short, the judiciary may not sit as a superlegislature to judge the wisdom or desirability of legislative policy determinations made in areas that neither affect fundamental rights nor proceed along suspect lines. . . .

427 U.S. at 303 (citations omitted).

The Minnesota Supreme Court found, and appellants apparently admit that the classification embodied in Minn. Stat. § 179.74, subd. 5, does not involve a suspect classification or touch upon a fundamental right. *See*, Appellants Jurisdictional Statement at 10. Public employees are clearly not a suspect classification. Nor is the right of public employees to engage in collective bargaining with their public employer a fundamental (constitutional) right. *See, Lontine v. Van Cleave*, 483 F.2d 966 (10th Civ. 1973); *Winston-Salem/Forsyth County Unit of the North Carolina Association of Educators v. Phillips*, 381 F. Supp. 644 (N.D. N.C. 1974); *Stoner v. Fortson*, 379 F. Supp. 704 (N.D. Ga. 1974); *Newport News Fire Fighters Association Local 794 v. City of Newport News, Virginia*, 339 F. Supp. 13 (E.D. Va. 1972); *Aikins v. City of Charlotte*, 296 F. Supp. 1068 (W.D. N.C. 1969). At least two federal courts have expressly held that the classifications of certain public employees for collective bargaining purposes do not involve a suspect class or a fundamental right. *Vorbeck v. McNeal*, 407 F. Supp. 733 (E.D. Mo.), *aff'd.*, 426 U.S. 943 (1976); *University of New Hampshire Chapter of American Association of University Professors v. Haselton*, 379 F. Supp. 107 (D. N.H. 1975). Several state courts have also reached the same conclusion. *See, e.g., Professional Fire Fighters, Inc. v. Los Angeles*, 60 Cal.2d 276, 32 Cal. Rptr. 830, 384 P.2d 1958 (1963); *State ex rel. Missey v. Cabool*, 441 S.W.2d 35 (Mo.

1969); *Minneapolis Federation of Teachers v. Obermeyer*, 275 Minn. 347, 147 N.W.2d 358 (1966). Accordingly, section 179.74, subd. 5 must be sustained unless MEA and MCCFA show that no conceivable rational basis can justify a grant of authority to the Minnesota Legislature to modify or reject interest arbitration awards as to state employees.

The courts have repeatedly recognized the right of a legislature to treat classes of public employees differently for purposes of granting privileges or imposing burdens. *See, e.g., Muizquiz v. City of San Antonio*, 520 F.2d 993 (5th Cir. 1975); *Baker v. Cawley*, 459 F. Supp. 1301 (S.D. N.Y. 1978); *Smith v. Ehrlich*, 430 F. Supp. 818 (D. D.C. 1976); *Armstrong v. Howell*, 371 F. Supp. 48 (D.C. Neb. 1974); *Minneapolis Federation of Teachers v. Obermeyer, supra*; *Fabio v. City of St. Paul*, 267 Minn. 273, 126 N.W.2d 259 (1964); *Department of Health and Social Services v. State Personnel Board*, 84 Wis. 2d 675, 267 N.W.2d 644 (1978). In this regard two federal courts have recently held that all public employees need not be classified together for the purpose of delineating collective bargaining rights. *Vorbeck v. McNeal, supra*; *University of New Hampshire Chapter of American Association of University Professors v. Haselton, supra. See, also Beauboeuf v. Delgado College*, 303 F. Supp. 861 (E.D. La.) *aff'd* 428 F.2d 470 (1969). In the *Vorbeck* decision, the Court sustained the exclusion of policemen from the scope of a public sector labor relations act and explained that "[t]he determination of bargaining procedures for policemen is a decision properly reserved to the Missouri legislature." 407 F. Supp. at 739. Similarly, the Court in *Haselton* held that a statute granting bargaining rights to all state employees except for the academic employees of the state university system did not violate the equal protection clause.

State employees constitute a natural classification for collective bargaining purposes and share a distinct community of interest with regard to terms and conditions of employment. All state employees in Minnesota share a common "public employer" in the Commissioner of Personnel, who is responsible for representing the State of Minnesota in all collective bargaining negotiations. *See* Minn. Stat. § 179.74, subd. 2 (1976). Further, Minn. Stat. § 179.74 (1976) sets forth separate and distinct provisions relating to the collective bargaining process with respect to state employees. Of particular importance is the substantial difference in the bargaining unit determination criteria provided for state employees as contrasted with that provided for other public employees. *Compare* Minn. Stat. § 179.71, subd. 3 (1976) *with* § 179.74, subd. 4 (1976).

The unique status of state employees has also been expressly recognized in the public sector labor relations statutes of a number of other states. In Nevada and Oklahoma, state employees are excluded from the scope of statutes that confer collective bargaining rights on other public employees.[2] Similarly, at least six states have labor relations statutes that are applicable solely to state employees and that treat state employees distinctly from labor relations statutes applicable to other public employees.[3]

The Minnesota Supreme Court found that at least three rational bases exist for treating state employees differently from other public employees for purposes of collective bargaining, each in itself sufficient to sustain the classification. *First*, the classification in question coincides with an important dif-

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[2] Nev. Rev. Stat. § 228.010 *et seq.*; Okla. Stat. Ann. tit. 11, § 548.1, *et seq.* (police, fire, and municipal employees) and tit. 70, § 509.0, *et seq.* (teachers).

[3] Cal. Gov't Code § 3512, *et seq.*; Conn. Gen. Stat. §§ 5-270 to 5-280; Me. Rev. Stat. tit. 26 § 979, *et seq.*; R.I. Gen. Laws § 36-11-1, *et seq.*; Vt. Stat. Ann. tit. 3, § 901, *et seq.*; Wisc. Stat. Ann. § 111.80, *et seq.*

ference in the distribution of powers of state and local government units. Governmental power at the state level is separated into three distinct branches that perform quite separate duties. This distinction is not present at the local level.

Minn. Const. art. III, § I mandates that "[t]he powers of [state] government shall be divided into three distinct departments: legislative, executive and judicial." Thus, the Legislature is constitutionally directed to enact laws and appropriate funds for the operation of state government, while the Governor, as head of the executive branch, is constitutionally directed to execute the laws of the state. *See*, Minn. Const. art. IV, V, and XI. The procedures set forth in the PELRA with respect to state employees merely reflect this distribution of power. Since the role of a "public employer" essentially entails administrative functions, such as the negotiation of collective bargaining agreements, this task has been delegated to the Commissioner of Personnel. *See* Minn. Stat. § 179.74 (1976). However, the ultimate approval of terms and conditions of employment which requires the appropriation of funds is necessarily a legislative function[4] and has been entrusted to the Legislature by section 179.74, subd. 5.

In contrast, the separation of powers doctrine is inapplicable to municipal and other local government units such as school boards. *See* Minn. Const. art. III, § 1; *State v. City of Mankato*, 117 Minn. 458, 136 N.W. 264 (1912). Appellants argue that the separation of powers at the state level is not a rational basis for distinguishing between state governmental units and other governmental units since certain cities in Minnesota operate with a Mayor as head of an executive branch and a city council as the legislative branch. Appel-

[4] *See* Minn. Const. art. XI, § 1; Butler v. Hatfield, 277 Minn. 314, 152 N.W.2d 484 (1967).

lants Jurisdictional Statement at 11. Appellants ignore the fact that at the local level, county boards, city councils, and school boards commonly exercise both executive and legislative authority. *See State ex rel. Johnson v. Independent School District No. 810*, 260 Minn. 237, 109 N.W.2d 596 (1961). The Minnesota Legislature recognized this distinction when it clarified who, for purposes of PELRA, the "public employer" at the local level is. Minn. Stat. § 179.63, subd. 4 (1978) provides that "public employer" means "the governing body of a political subdivision or agency or instrumentality thereof which has final budgetary approval authority". Thus, at the local level, the same body that conducts negotiations as the public employer also has authority to adopt and implement agreements or arbitration awards. In this setting, a two-step process of the type authorized for state employees would be redundant and, accordingly, is not provided by the PELRA.

Second, the size and complexity of state government require centralized control to provide consistency as to the terms and conditions of employment for state employees. It is clear that the state is by far the largest single employer of public employees in Minnesota.[5] This fact presents unique problems with regard to effective and orderly labor relations. Unlike local governmental units in which all employees performing similar duties may easily be included in the same bargaining unit[6] and thereby uniformly covered by the same collective bargaining contract, state employees are widely dispersed by

[5] The implication that the government of the State of Minnesota is lesser in size and complexity than that of the largest county in Minnesota is absurd. Appellants Jurisdictional Statement at 10. In addition, appellants fail to indicate what relevance the size and complexity of the government of the City of New York, New York, or the County of Los Angeles, California has to the collective bargaining structure for the State of Minnesota.

[6] *See* Minn. Stat. § 179.71, subd. 3 (1976).

both geography and department. In fact, the record herein indicates that over 100 separate bargaining units have been designated for state employees. Accordingly, state employees who perform similar duties may often be subject to the terms of different employment contracts.

Three steps have been taken in an attempt to maintain some semblance of uniformity in benefits and working conditions among state employees. First, Minn. Stat. § 179.74, subd. 4 (1976) requires that bargaining units be department-wide in scope whenever feasible. By requiring larger bargaining units in this manner, negotiations can be conducted more efficiently and with less danger of "whipsawing" by employee organizations. *See*, Shaw and Clark, *Determination of Appropriate Bargaining Units In The Public Sector: Legal and Practical Problems*, 51 *Ore. L. Rev.* 152, 173-76 (1971). Second, the Legislature requires that the Commissioner of Personnel maintain equitable internal pay relationships for state employees with similar job duties. Minn. Stat. §§ 43.065 and 43.111 (1978). Finally, the Legislature has retained the authority to modify or reject the financial provisions of collective bargaining agreements for state employees. Minn. Stat. § 179.74, subd. 5 (1976). Without this latter provision, the state lacks an effective mechanism to protect against the likelihood of inconsistent terms and conditions of employment in situations where the Commissioner of Personnel does not voluntarily negotiate state employee salaries. Although appellants contend that the requirement that the Commissioner of Personnel or his representative conduct all negotiations between the state and the exclusive representatives of state employees is sufficient to insure the necessary uniformity,[7] the instant case vividly illustrates the need for legislative review. The record herein indicates that the MCCFA's arbitration award provided for salary increases that were four percent higher than those provided by the arbitration award for the state university faculty. The MCCFA award was similarly in excess of the salary increases authorized for the University of Minnesota faculty. Accordingly, the Legislature's modification of the Community College award was necessary in order to maintain comparability.

[7] Appellant's Jurisdictional Statement at 10.

Third, Minn. Stat. § 179.74, subd. 5 reasonably reflects the powers and duties of the Minnesota Legislature. The Minnesota Constitution entrusts the Legislature with sole authority over the appropriation of funds for the operation of state government. Minn. Const. art. III, § 1; art. XI, § 1. Article XI, § 1 of the Minnesota Constitution specifically provides that "[n]o money shall be paid out of the treasury of this state except in pursuance of an appropriation by law." Since the salaries of the Community College faculty are funded directly by the Legislature, in order for the Community College faculty to receive their salaries there must be a direct appropriation by the Legislature. A legislative appropriation is always a prerequisite to state liability. *County of Beltrami v. Marshall*, 271 Minn. 115, 119, 135 N.W.2d 749, 753 (1965). This is not the case for non-state public employees since the legislature is not liable for, nor does it appropriate the money for, their salaries.[8]

[8] Appellants argue that since a significant amount of the compensation paid to employees of local units of government is paid by state appropriation in effect the State has agreed to be bound by arbitration awards covering employees of local units of government. Appellants' Jurisdictional Statement at 11-12. Appellants' argument ignores the fact that appropriations are made to the State Board for Community Colleges specifically for salary while no salary appropriation is made to local units of government and the local units are free, within limits not relevant here, to apportion the money as they choose. *Compare* Minn. Laws 1977, Ch. 449 with Minn. Laws 1977, Ch. 447.

But more importantly, although it may be constitutionally permissible in Minnesota to have final and binding interest arbitration for employees of local units of government,[9] it is not constitutionally permissible at the state level. As the Minnesota Supreme Court stated in its decision herein:

> As the source of sovereign governmental power, the Legislature is able to bind all other groups except a subsequent legislature, and for this reason must necessarily reserve the right to review future arbitration awards of state employees.

Appellants Jurisdictional Statement at A-6. The interpretation of the laws of Minnesota is clearly a matter for the Supreme Court of Minnesota and that interpretation is binding on this Court. *Landmark Communications Inc. v. Virginia*, 435 U.S. 829 (1978); *Brown v. Ohio*, 432 U.S. 161 (1976).

It is clear from the above three bases cited by the Minnsota Supreme Court that the classification contained in Minn. Stat. § 179.74, subd. 5 is supported by a number of legitimate, reasonable grounds and is constitutionally required. Since appellants cannot show that section 179.74, subd. 5 is without any conceivable rational basis, the Minnesota Supreme Court's decision was correct and should be summarily affirmed.

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[9] City of Richfield v. Local 1215, etc., 276 N.W.2d —— (Minn. 1979).

CONCLUSION

The decision of the Minnesota Supreme Court is obviously correct and appellant has not raised any substantial question to be decided by this Court.

We respectfully submit that the Court should dismiss this appeal or, in the alternative, affirm the judgment entered by the Minnesota Supreme Court.

Respectfully submitted,

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APPENDIX

APPENDIX A

Minn. Stat. § 179.63, subd. 4 (1978):

Subd. 4. "Public employer" or "employer" means (a) the state of Minnesota in respect to employees of the state not otherwise provided for in this subdivision or section 179.74 for executive branch employees; (b) the board of regents of the University of Minnesota, in respect to employees thereof; and (c) the governing body of a political subdivision or agency or instrumentality thereof which has final budgetary approval authority, in respect to employees of that subdivision, agency or instrumentality. . . .

Minn. Stat. § 179.69, subd. 5 (1978):

Subd. 5. In the event the employer and exclusive representative fail to execute a contract pursuant to subdivision 4, they shall each submit their respective final positions on those terms and conditions of employment not agreed upon by the parties to the director . . . Either or both parties except for essential employees may after this time petition the director for binding arbitration stating that an impasse has been reached and the director has determined that further mediation efforts under subdivision 1 would serve no purpose. If the employer has petitioned for binding arbitration said proceedings shall begin within 15 days thereof and be binding on both parties. The director shall determine the matters not agreed upon based upon his efforts to mediate the dispute. If the employee representative has petitioned for binding arbitration the employer shall have 15 days after the director of mediation has determined that an impasse has been reached to reject the request or agree to submit matters not agreed upon to binding arbitration. If the employer does not respond

within 15 days it shall be regarded as a rejection and said rejection shall be a refusal by the employer within the meaning of section 179.64, subdivision 7. Under a petition by either party the parties may stipulate those agreed upon items to be excluded from arbitration. . . .

Minn. Stat. § 179.71, subd. 3 (1976):

Subd. 3. The director shall determine appropriate units. In determining the appropriate unit he shall take into consideration, along with other relevant factors, the principles and the coverage of uniform comprehensive position classification and compensation plans of the employees, involvement of professions and skilled crafts and other occupational classifications, relevant administrative and supervisory levels of authority, geographical location, and the recommendation of the parties, and shall place particular importance upon the history and extent of organization and the desires of the petitioning employee representatives. . . .

Minn. Stat. § 179.74, subd. 2 (1976):

Subd. 2. The employer of state employees shall be, for purposes of sections 179.61 to 179.77, the commissioner of personnel or his representative.

Minn. Stat. § 179.74, subd. 4 (1976):

Subd. 4. The commissioner of personnel shall meet and negotiate with the exclusive representative of appropriate units in the manner prescribed by sections 179.61 to 179.77; provided, however, that the director of mediation services shall define appropriate units of state employees as all the employees under the same appointing authority except where professional, geographical or other considerations affecting employment relations clearly require appropriate units of some other composition. . . .